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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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07/511,951 04/16/90 NILSSEN

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EXAMINER

ZARABIAN, A

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BARRINGTON, IL 60010

ART UNIT PAPER NUMBER

252

15

DATE MAILED:

11/19/90

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☒ This action is made final.

A shortened statutory period for response to this action is set to expire Three month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-19 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-19 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

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EXAMINER'S ACTION

The disclaimer submitted by applicant is not accepted since the recording fee has not been submitted nor is there any authorization in the application file for use of a deposit account.

In the affidavits submitted by Robert E. Schnider and John Giorgis the probative value of each affiant setting forth "an obvious application" of Spira's teachings is found to be negligible since both affiants admit that they have never seen appellant's application and claims. The lack of nexus between the claimed subject matter and the conclusions reached in the affidavits renders both affidavits insufficient to prove that which is discussed therein.

In the affidavit submitted by Dale E. Fiene it is disclosed that 1) the transformer (19) of Kivari is mounted within the neck of the lamp glass envelope (12) and a transformer of such small size will not provide power to be sufficient for use in a track lighting application 2) a lighting system of the high frequency indicated by Spira would require special distribution means as shown in figure 2 and it would not seem reasonable to use Neumanns track lighting system with Spira's lighting system 3) the track lighting system defined by claim 1 of present application does not constitute an obvious modification of Spira's teachings in view of the teachings of Kivari and Neumann.

In response, it should be noted that in order to provide

more power in Kivari's lamp a transformer of larger size should be used and the neck of the lamp glass envelope could also be made wider than what is shown in figure 1 therefore more power would be provided by Kivari's lamp with respect to figure 2 of Spira's system it should be noted that figure 2 is a cross sectional view of only a preferred transmission line for connecting the output of the inverter to the ballast over relatively long distance with relatively low loss and any other desired connections could be used specially if the distance from inverter (22) to its load is short (see column 4, line 22 and column 5 lines 4-12 and 50-52). Therefore the use of any other types of transmission lines for powering a track light which is only a mechanical support for the electrical conductors, lamps,... etc. is not unusual and the operating frequency is immaterial to the track support since a track support means will support any frequency operating lamp.

Therefore this affidavit is insufficient since the opinions it sets forth are not persuasive. With respect to the opinions on obviousness, the affiant (Dale E. Fiene) is not qualified as a registered attorney; his opinion with respect to legal issues such as obviousness is disregarded.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section

102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-19 are rejected under 35 U.S.C. § 103 as being unpatentable over Spira in view of Kivari and Neumann.

Claims 1-19 are rejected under 35 U.S.C. § 103 as being unpatentable over Nilssen in view of Kivari and Neumann.

Reference is made to the reasoning set forth in the parent application serial number 889,746, final rejection date Dec. 3, 1987 and decision by board of Patent Appeals date March 29, 1990.

This is a continuation of applicant's earlier application S.N. 889,746. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS

Serial No. 511,951

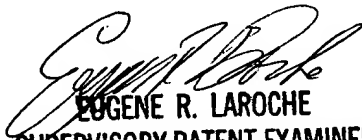
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Art Unit 252

ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to A. Zarabian at telephone number (703) 308-3360.

Zarabian/jm
November 14, 1990


EUGENE R. LAROCHE
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 252